



C.M.A(MD)No.59 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.59 of 2020

Seyadhunnisa

... Appellant/Respondent/
Plaintiff

Vs.

B.Bagatsingh Mohammed

... Respondents/Appellant/
Defendant

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (U) of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.3 of 2016 on the file of the IV Additional District Court, Tirunelveli, dated 07.09.2019 in so far as remanding the suit in O.S.No.123 of 2011 on the file of the Principal Sub-Court, Tirunelveli for fresh disposal by setting aside the judgment and decree of the suit, dated 31.10.2014.

For Appellant : Mr.H.Arumugam

For Respondent : Mr.C.K.M.Appaji



C.M.A(MD)No.59 of 2020

JUDGEMENT

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The present appeal has been filed by the plaintiff in a suit for declaration of title and permanent injunction, challenging an order of remand passed by the first appellate Court.

2. The plaintiff had filed O.S.No.123 of 2011 on the file of Principal Sub Court, Tirunelveli for the relief of declaration of title and permanent injunction with regard to second schedule property. The defendant had raised various grounds including the issue of lack of pecuniary jurisdiction of the Sub Court, Tirunelveli. The learned trial Judge had framed four issues relating to the title and possession of the property and ultimately, decreed the suit as prayed for after arriving at a finding that the plaintiff has proved his title and possession over the 2nd schedule property.

3. Challenging the said judgment and decree, the defendant had filed A.S.No.3 of 2016 before 4th Additional District Court, Tirunelveli. The learned District Judge has arrived at a finding that the trial Court has not framed any issue relating to the lack of pecuniary jurisdiction. The first appellate Court further found that the trial Court has not considered



C.M.A(MD)No.59 of 2020

properly with regard to the power of attorney marked as Exhibit A.21, dated 16.10.1985. The first appellate Court further found that the trial Court has not properly appreciated Exhibit A.10 sale deed and the validity and genuineness of Exhibit A.12. After arriving at this finding, the first appellate Court has proceeded to remit the matter back to the trial Court directing the trial Court to frame issues and arrive at a finding with regard to Exhibit A.10, A.12 and A.21. Challenging the said order of remand, the present appeal has been filed by the plaintiff.

4. According to the learned counsel appearing for the appellant/plaintiff, the oral and documentary evidence are already on record and the first appellate Court is empowered to re-appreciate the said oral and documentary evidence and has got all the powers of the trial Court as contemplated under Section 107 of Code of Civil Procedure. Therefore, it is not necessary to remit the matter to get certain findings of the trial Court. The learned counsel for the appellant had further contended that when the trial Court has discussed in detail all the issues relating to those documents, there is no necessity at all for remanding the matter back to the trial Court. He further pointed out that though it was pleaded by the defendant in his written statement relating to lack of pecuniary jurisdiction, no contra document was placed by him.



C.M.A(MD)No.59 of 2020

The grounds raised by the defendant in the first appeal were based upon certain sale deeds in his favour which were not marked before the Court.

Therefore, there was no necessity whatsoever to remit the matter back to the trial Court.

5. Per contra, the learned counsel appearing for the respondent had contended that whenever defense is raised in the written statement relating to lack of pecuniary jurisdiction and the valuation of the suit, the trial Court ought to have framed an independent issue relating to the same and thereafter, arrived at a finding. However, the trial Court has not framed such an issue. He further contended that the validity of these documents, namely Exhibits A.10, A.11, A.12 and A.21 have to be reassessed by the trial Court after letting in oral and documentary evidence. Only thereafter, a correct conclusion could be arrived at by the Courts. Hence, he prayed for sustaining the order passed by the first appellate Court.

6. I have carefully considered the submissions made on either side.

7. A perusal of the order of remand clearly indicates that the learned first appellate Judge has raised doubts with regard to the validity



C.M.A(MD)No.59 of 2020

of the documents filed by the plaintiff, namely Exhibit A.10, A.11, A.12 and A.21. The genuineness and validity of these documents, if they are disputed by the defendant, it is for the first appellate Court to re-appreciate the existing oral and documentary evidence already on record to arrive at a finding with regard to the validity and genuineness of these documents. For the said purpose, it cannot be remanded to the trial Court.

8. As far as the ground of lack of pecuniary jurisdiction is concerned, though the defendant had raised such a plea in his written statement, no contra document was placed by the defendant before the trial Court to establish with regard to the value of the property and the lack of pecuniary jurisdiction. In fact, the trial Court has also considered the said plea in Paragraph No.21 of its judgment and it has arrived at a finding that the trial Court has got pecuniary jurisdiction. In case, if the first appellate Court feels that the said finding is wrong, it is for the first appellate Court to reverse the said finding and arrive at different finding. Therefore, the first appellate Court has erroneously remitted the matter back to the trial Court.



C.M.A(MD)No.59 of 2020

9. The order of remand is an extraordinary power available to the first appellate Court has to be used sparingly only in cases where the first appellate Court arrives at a finding that the available oral and documentary evidence are not sufficient to arrive at a finding. The order of remand can also be made in cases where the suit has been decided on a preliminary issue. In all other cases, where the suits have been decided on merits, the first appellate Court should make efforts only to dispose of the appeal on merits and should not attempt to remand the matter back to the trial Court. When Section 107 of the Code of Civil Procedure empowers the appellate Court to take additional evidence also and it has got the same powers as that of the trial Court, the said powers have to be exercised by the first appellate Court instead of remitting the matter back to the trial Court. A perusal of the judgment would clearly indicate that the suit has not been disposed of on any preliminary issue. Therefore, the first appellate Court was not right in invoking Order 41 Rule 23 of Code of Civil Procedure to remit the matter back to the trial Court.

10. In view of the above said deliberations, the findings of the first appellate Court is set aside and the matter is remitted back to the first appellate Court (Additional District Court-IV) for fresh consideration on merits and in accordance with law. Both the parties are entitled to raise



C.M.A(MD)No.59 of 2020

all the pleas before the first appellate Court.

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11. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs.

30.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Additional District Court-IV,
Tirunelveli.
- 2.The Principal Sub-Court,
Tirunelveli.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.



WEB COPY



C.M.A(MD)No.59 of 2020

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Order made in
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30.03.2023